

FUNDAMENTALS OF TRIAL ADVOCACY COURSE

October 5 – 8, 2020
Phoenix, Arizona



OPENING STATEMENT

Presented by:

Gina Cucuzella
Deputy Pinal County Attorney

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
3838 N. Central Ave., Ste. 850
Phoenix, Arizona 85012

ELIZABETH BURTON ORTIZ
EXECUTIVE DIRECTOR

The Opening Statement

GINA CUCUZELLA

DEPUTY COUNTY ATTORNEY

PINAL COUNTY ATTORNEY'S OFFICE

Purposes of opening

- Get the jury's attention
- Tell the story in a cohesive way
- Develop rapport and confidence with the jury
- Get them thinking (processing information) like you
- Present your theme and theory in a memorable way

A powerful opening will...

- Advance theme and theory
- Tell a story
- Create word pictures using descriptive language
- Personalize the victim/witnesses
- Draw the sting on weaknesses
- Use visuals where appropriate

What to Avoid:

- Excessive introductions
- *“The witness will testify that....”*
- *“What I say is not evidence...”*
- *“The evidence will show...”*
- *“The purpose of the opening statement...”*
- Inform about the law

Recipe for an Opening

- Theme
 - Communicate your theme and get the jury's attention
- Narrative (Theory)
 - Preview the case with compelling storytelling
 - Deal with weaknesses up front and on your terms
- Charges
 - Relate facts to charges
- End with a call to action/Theme

Theme vs. Theory

Theory

- “Why the LAW says you win”
 - Simple factual statement that incorporates all facts into a cohesive account.
 - Legal=elements (who, what, when, where)
 - Factual=why and how

Theme

- “Why the jury WANTS you to win”
 - Moral Persuasion
 - “This is a case about...”
 - What did D do that deserves punishment?
 - What *values* do we share as a community that makes this illegal?

Theory

- How was the crime committed???
- Accomplice Liability or actual defendant acts?
- Actual or Constructive Possession?
- APC or Driving? Both?

Theme

- A phrase or idea that explains the case and what the Defendant did that deserves punishment
 - What does this case boil down to?
 - Why should the jurors care?
- Often, the theme should address your case's WEAKNESS (*i.e.*, the defense)
 - How is he going to try to beat you?

EXAMPLE THEME:

This is a case about a thief. The defendant believes that if he sees something he wants, he can just take it. And if he hadn't been caught red handed on the night in question, he may very well have gotten away with his crime.

Remember this!

You can live without a
theme; you will die
without a theory!

Don't Think Themes are Effective?



“This is a case about choices”



The Best Story Wins

- If you do not offer the jury the truth of the case through your narrative, **THEY WILL CREATE A STORY OF THEIR OWN**
- The FACTS of the case are not the STORY of the case

Introduction to Car Burglary

“When most of us are winding down after busy work day, putting our heads to our pillows to get a few hours of sleep, Jeremia McCabe starts his job – thief. When McCabe goes to work, like most of us, he has tools of the trade. A plumber has a pipe wrench. An accountant has a calculator. And a thief has a jiggle key and the cover of darkness. So, On August 10, 2016 just before midnight the defendant, went to work--he went driving through a Peoria neighborhood looking for just the right selection--- a choice that would allow him to quickly take something that didn't belong to him without being discovered.”

To Powerpoint, or not to Powerpoint?!

Jeff Bezos Banned PowerPoint in Meetings. His Replacement Is Brilliant

Narrative memos have replaced PowerPoint presentations at Amazon.
Here are 3 reasons why.



By Carmine Gallo *Keynote speaker and author, Five Stars: The Communication Secrets to Get from Good to Great* [@carminegallo](#)



1. Our brains are hardwired for narrative.
2. Stories are persuasive
3. Bullet points are the least effective way of sharing ideas.

1. Our brains are hardwired for narrative.

Narrative storytelling might not have been as critical for our survival as a species as food, but it comes close.

Anthropologists say when humans gained control of fire, it marked a major milestone in human development. Our ancestors were able to cook food, which was a big plus. But it also had a second benefit. People sat around campfires swapping stories. Stories served as instruction, warning, and inspiration.

Recently, I've talked to prominent neuroscientists whose experiments confirm what we've known for centuries: The human brain is wired for story. We process our world in narrative, we talk in narrative and--most important for leadership--people recall and retain information more effectively when it's presented in the form of a story, not bullet points.

known for centuries: The human brain is wired for story. We process our world in narrative, we talk in narrative and--most important for leadership--people recall and retain information more effectively when it's presented in the form of a story, not bullet points.

2. Stories are persuasive.

Aristotle is the father of persuasion. More than 2,000 years ago he revealed the three elements that all persuasive arguments must have to be effective. He called these elements "appeals." They are: ethos, logos, and pathos. Ethos is character and credibility. Logos is logic--an argument must appeal to reason. But ethos and logos are irrelevant in the absence of pathos--emotion.

Emotion is not a bad thing. The greatest movements in history were triggered by speakers who were gifted at making rational *and* emotional appeals: Abraham Lincoln and Martin Luther King, Jr.; and John F. Kennedy, who blended science and emotion to inspire America's moon program.

Neuroscientists have found emotion is the fastest path to the brain. In other words, if you want your ideas to spread, story is the single best vehicle we have to transfer that idea to another person.

Neuroscientists have found emotion is the fastest path to the brain. In other words, if you want your ideas to spread, story is the single best vehicle we have to transfer that idea to another person.

My Method in Opening Prep

- Know your facts, IN AND OUT
- Start by telling your case to a family member or non-prosecutor friend
 - From memory, in laymen's terms
- Later tell it to a prosecutor—get feedback!
 - Again, from memory or with sparse notes (this will help with later memorization attempts)
- Write it down
 - Begin by outlining your facts in the chronology you're going to present them
 - Decide where you want to begin (see next slide)
 - Decide from which perspective you're going to do this
- Add details
- Practice (I record myself, listen, repeat)
- Try to memorize

Where do you begin your story?

- Determine the Order

- Chronological

- Crime
 - Discovery

- Start at end and explain how it got to that point?

- “crumpled in a ditch on the side of rural route 3 is how police found the defendant’s truck with him passed out behind the wheel...”

- Start at a significant point in the story?

- “terrified for her safety, Cindy quickly ran down the hallway in an attempt to hide in a closet, but that’s when she encountered the defendant, blocking her path, knife in hand...”

- Determine the Point of View

- Storytelling is more compelling when you pick a narrative perspective of an involved party or parties rather than an omnipotent POV

Be Clear. Make it Simple.

Possible Points of View

1. The Victim
2. The Defendant
3. An important witness
4. ~~The police officer who wrote the DR~~

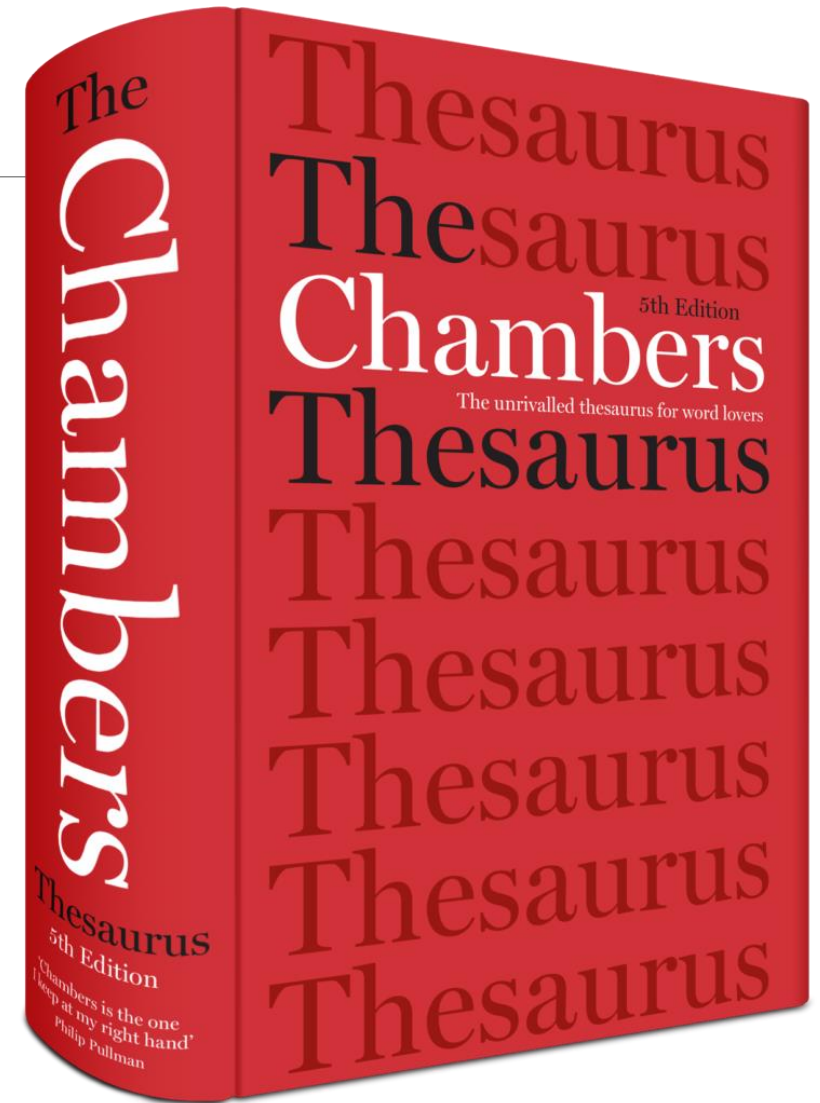
Choosing an interesting narrative perspective will
make your story much more engaging, compelling, and easy to follow

Use Descriptive Language

Contrast :

“The Defendant pulled out a gun and pointed it at the victim” with...

“The Defendant stabbed the victim 14 times causing horrible injuries” with...



Anticipate and Address Defenses

- **Subtly** address defenses
- **Do not** make promises about the Defense's case

Think about how the Defendant plans to beat you

Don't hide “Bad Facts”

- Remember, we seek the truth in what we do.
- Sometimes that means we have to overcome difficult facts.
- Address problems head-on
 - Reluctant victim
 - Victim/Witness with criminal history
 - Mishandled investigation or lack of evidence

How to Deal with Case Weakness

Attribute “bad facts” to the Defendant

- Who chooses who the witnesses and victims are in a criminal case?
- No fingerprints? No videotape? No DNA?
– that’s exactly the way the Defendant wanted it
- Then incorporate into theme/theory:
Defendant preys upon the weak; never the powerful, or those with a voice, only the defenseless, the kind he thinks no one cares about



How to Deal with Case Weakness

Show to the jury you gave them the whole truth!

- The weakness is not the big deal the defense will make it out to be
- The weakness is actually a strength
- Ultimately, the Defendant is still guilty: put the weakness in context

Tell the Jury what you're going to ask for:

At the conclusion of your narrative, relate the facts to your charges in this case

“For these reasons,
Defendant is charged with...”



Finish Strong; Empower your Jurors

- Reiterate your Theme
- Call to the jury Action

Reiterate your Theme

“What is different about the jobs held by many and the job of Mr. McCabe is that the rules that govern his work are codified in law. If you see something you want you simply cannot take it and if you do there are consequences.”

Call the Jury to Action

“At the end of this trial after all of the facts have been presented to you and you are firmly convinced of his guilt, I will ask that you remind the defendant that society will not accept the profession of a thief and that you find him guilty as justice demands.”

Some Logistics

A word about delivery

- Use of notes
 - Memorization isn't for everyone, but if you can memorize key points and chronology, your notes will be more helpful if you get nervous or off track
- Word choice
 - Keep in mind you have jurors from all walks of life, you don't need to use overly complex terms or legal jargon---in fact, don't!
- Movement for impact vs. pacing
- Use of podium
- Use of exhibits

FYI: They're Judging You

What are jurors thinking as you present to them?

- Can I Respect this Person?
 - Respect is a product of feeling like someone is competent
- Do I trust what this person is telling me?
 - Establishing trust is key to showing competency
 - Don't oversell it
 - Don't be too playful – you want them to appreciate the seriousness
 - Be confident in what you're saying

Example Opening



What was the theme?

Do you buy the State's theory?

Any Questions?

☐ Comments?

☐ Concerns?

☐ Thoughts?

Gina Cucuzella

Pinal County Attorney's Office

Desk: (520) 866-5550

Cell: (520) 705-1668

Gina.Cucuzella@pinal.gov

